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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
	)	Civil Number: 3:23-mc-80029-JCS
Petitioner,)	
	)	UNITED STATES' ADMINISTRATIVE
v.	)	MOTION REQUESTING THE COURT
	)	CONSIDER WHETHER MATERIAL IN
PAYWARD VENTURES INC., d/b/a	)	ITS RESPONSE TO PAYWARD
KRAKEN OR KRAKEN.COM, OR ITS	)	VENTURES INC.'S OPPOSITION TO
PREDECESSORS, SUBSIDIARIES,	)	PETITION TO ENFORCE INTERNAL
DIVISIONS, OR AFFILIATES,	)	REVENUE SERVICE SUMMONS AND
	)	SUPPORTING DECLARATION
Respondent.	)	SHOULD BE FILED UNDER SEAL

Payward Ventures, Inc. ("Kraken") has filed two belated administrative motions to file under seal portions of its opposition and the supporting declaration of Todd Siemers. (ECF Nos. 17 and 19), Because the Court had yet to rule on either motion, the United States filed its reply brief and supporting declaration on Friday, May 5, with redactions consistent with what Kraken filed. (ECF Nos. 21, 21-1). Along with its filings, the United States filed a notice stating that it submitted redacted documents over objections as stated in its filed oppositions (ECF Nos. 18-20) only to preserve the record for the Court's decision. Further, that the filing of the redacted versions was not a concession that the documents were properly sealed or that Kraken's redactions were appropriate. (ECF No. 22). Immediately after filing, the United States emailed copies of its unredacted documents to jcsपो@cand.uscourts.gov and opposing

1 counsel. Counsel for Kraken used the same email address for chambers when it emailed its unredacted
2 versions on April 24, 2023.

3 On May 5, 2023, the Court issued an order directing the United States to comply with Civil
4 Local Rule 79-5(f) which requires the filing of a motion requesting that the Court consider sealing the
5 material in its reply brief and the supporting declaration that is the subject of Kraken's motion to seal.
6 (ECF No. 23). It also indicated that the United States had failed to provide it with unredacted versions
7 of its documents. Today, the United States has again emailed copies of its unredacted documents to
8 jcsपो@cand.uscourts.gov, 9Docketing@cand.uscourts.gov, and opposing counsel.

9 Except for a narrow range of documents that are traditionally secret, this Court begins its sealing
10 analysis with a "strong presumption in favor of access to court records." *Foltz v. State Farm Mut. Auto.*
11 *Ins. Co.*, 331 F.3d 1122, 1134-35 (9th Cir. 2003). Consistent with this view, the Department of Justice
12 takes the position that court proceedings should be open and that documents generally should not be
13 filed under seal. *See* 28 C.F.R. § 50.9.

14 Civil Local Rule 79-5(c)(1) requires a party seeking to file documents under seal to submit "a
15 specific statement of the applicable legal standard and the reasons for keeping a document under seal,
16 including an explanation of: (i) the legitimate private or public interests that warrant sealing; (ii) the injury
17 that will result if sealing is denied; and (iii) why a less restrictive alternative to sealing is not sufficient."

18 None of the information redacted in the United States' filings (ECF Nos. 21-21-1) meets this
19 rigorous standard. As the United States has articulated, the information Kraken seeks to have protected from
20 the public view is not confidential or proprietary. It does not implicate legitimate private or public interests
21 and the only injury Kraken has identified is speculative at best, especially considering how much information
22 it already offers to the public on its website. The United States does not believe that any of its redactions are
23 appropriate and makes this motion to keep those items under seal only to preserve the Court's ability to
24 decide the merits of Kraken's two belated administrative motions.

1 For these reasons, the Court should grant the United States' motion that it consider sealing the
2 material in its reply brief and supporting declaration that is the subject of Kraken's motion to seal. The
3 United States further requests that Kraken's motions to seal be denied.

4 Dated this 8th day of May, 2023.

5 DAVID A. HUBBERT
6 Deputy Assistant Attorney General

7 /s/ Amy Matchison
8 AMY MATCHISON
9 Trial Attorney, Tax Division
10 U.S. Department of Justice
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